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PAUL REICHE III and ROBERT FREDERICK FORD

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

STARDOCK SYSTEMS, INC.,

Plaintiff,

v.

PAUL REICHE III and ROBERT
FREDERICK FORD,

Defendants.

Case No. 4:17-CV-07025-SBA

**[PROPOSED] ORDER RE REICHE AND
FORD'S EVIDENTIARY OBJECTIONS
TO THE DECLARATION OF DAVID
MAY IN SUPPORT OF STARDOCK'S *EX
PARTE* MOTION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE WHY PRELIMINARY
INJUNCTION SHOULD NOT BE
GRANTED**

Judge: Hon. Sandra B. Armstrong

Complaint Filed: Dec. 8, 2017
Trial Date: June 24, 2019

PAUL REICHE III and ROBERT
FREDERICK FORD,

Counter-Claimants,

v.

STARDOCK SYSTEMS, INC.,

Counter-Defendant.

	<u>Proffered Evidence</u>	<u>Objection</u>	<u>Ruling</u>
1.	<p>May Decl., ¶ 2, Pg. 2, Lines 20-25</p> <p>“clearly suggesting that Reiche did not own the rights he purported to license to Accolade. Thus, there are serious questions as to whether Accolade and Atari were obligated to pay royalties to Reiche in the first place, in view of Reiche’s misrepresentations to Accolade in the 1988 License Agreement.</p>	<p><u>FRE 401/402</u> Arguments by counsel in a declaration are not factual allegations and are therefore irrelevant.</p> <p><u>FRE 602</u> <u>FRE 701</u> <u>Lacks Foundation</u> May lacks the personal knowledge necessary to make this statement, as he has failed to lay any foundation to show that he has the expertise necessary to provide testimony as to Reiche and Ford’s legal rights either with regard to Star Control I and II or the 1988 Agreement. May has no personal knowledge or recollection of these events, as he was not present for their occurrence. His opinion therefore constitutes improper lay witness testimony that encompasses technical and/or specialized exclusively within the scope of Rule 702.</p> <p>May likewise lacks personal knowledge as to Reiche and Ford’s alleged “misrepresentations to Accolade.” May has no personal knowledge or recollection of these events, as he was not present for their occurrence.</p> <p><u>Speculation</u> May is speculating as to whether “there are serious questions” as to whether Accolade and Atari were obligated to pay royalties to Reiche and Ford and to Reiche and Ford’s alleged “misrepresentations.”</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

1		<u>FRE 801/802</u>	
2		<u>FRE 1002</u>	
3		Counsel's statements appear to be	
4		based on communications between	
5		Reiche and Ford's attorneys and	
6		the U.S. Copyright Office	
7		("USCO"). These statements are	
8		hearsay as they are extrajudicial	
9		statements now offered for their	
10		truth. Moreover, the best evidence	
11		of the statements made in those	
12		communications are the statements	
13		themselves and not May's	
14		interpretation of them (FRE 1002).	
15	2. May Decl., ¶ 3, Pg. 3, Lines 1-4	<u>FRE 401/402</u>	<input type="checkbox"/> Sustained
16	"Again, whether there were any	Arguments by counsel in a	<input type="checkbox"/> Overruled
17	licensed rights for Reiche to assign	declaration are not factual	
18	in the first place is clearly in	allegations and are therefore	
19	question since his counsel's	irrelevant.	
20	communications with the USCO	<u>FRE 602</u>	
21	confirm that Reiche did not own the	<u>FRE 701</u>	
22	rights he purported to license to	<u>Lacks Foundation</u>	
23	Accolade."	May lacks the personal knowledge	
24		necessary to make this statement,	
25		as he has failed to lay any	
26		foundation to show that he has the	
27		expertise necessary to provide	
28		testimony as to Reiche and Ford's	
		legal rights either with regard to	
		Star Control I and II or the 1988	
		Agreement. May has no personal	
		knowledge or recollection of these	
		events, as he was not present for	
		their occurrence. His opinion	
		therefore constitutes improper lay	
		witness testimony that	
		encompasses technical and/or	
		specialized exclusively within the	
		scope of Rule 702.	
		May likewise lacks personal	
		knowledge as to Reiche and	
		Ford's alleged "misrepresentations	
		to Accolade." May has no	

1		personal knowledge or recollection of these events, as he was not present for their occurrence.	
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4		<u>Speculation</u>	
5		May is speculating as to whether	
6		“there are serious questions” as to	
7		whether Accolade and Atari were	
8		obligated to pay royalties to	
9		Reiche and Ford and to Reiche	
10		and Ford’s alleged	
11		“misrepresentations.”	
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13		<u>FRE 801/802</u>	
14		<u>FRE 1002</u>	
15		Counsel’s statements appear to be	
16		based on communications between	
17		Reiche and Ford’s attorneys and	
18		the U.S. Copyright Office	
19		(“USCO”). These statements are	
20		hearsay as they are extrajudicial	
21		statements now offered for their	
22		truth. Moreover, the best evidence	
23		of the statements made in those	
24		communications are the statements	
25		themselves and not May’s	
26		interpretation of them (FRE 1002).	
27	3. May Decl., ¶ 4, Pg. 3, Lines 5-14	<u>FRE 401/402</u>	<input type="checkbox"/> Sustained
28	“During the examination of the ‘496	The content of the USCO’s	<input type="checkbox"/> Overruled
	Registration, the USCO also	examination of Reiche and Ford,	
	questioned counsel for Reiche and	on its own, is irrelevant as it has	
	Ford regarding suggestions that Star	no tendency to make any fact	
	Control II was produced on behalf	more or less probable nor is it of	
	of Reiche and Ford’s company,	any consequence in determining	
	Toys for Bob, and whether or not	the action.	
	Toys for Bob should actually be		
	listed as the author and claimant of	Exhibit 1 is likewise irrelevant for	
	the registration. <i>Id.</i> Upon	the same reasons.	
	information and belief, Toys for Bob		
	is a subsidiary of the well-known	<u>FRE 602</u>	
	game publishing company,	<u>Speculation</u>	
	Activision Publishing, Inc.	May lacks personal knowledge	
	(“Activision”).	and is speculating as to what	
		occurred during the examination	
		of the ‘496 Registration and/or has	

1	Exhibit 1.	not established the foundation for such knowledge (if it exists).	
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3		<u>FRE 801/802</u>	
4		<u>FRE 1002</u>	
5		Counsel's statements appear to be based on communications between Reiche and Ford's attorneys and the U.S. Copyright Office ("USCO"). These statements are hearsay as they are extrajudicial statements now offered for their truth. Moreover, the best evidence of the statements made in those communications are the statements themselves and not May's interpretation of them (FRE 1002).	
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11	4. May Decl., ¶ 5, Pg. 3, Lines 19-22	<u>FRE 401/402</u>	<input type="checkbox"/> Sustained
12	"It is unclear from these assignments, though, what, if any, creative expression was actually authored by these various individuals and is being alleged to have been transferred to Reiche and Ford."	Arguments by counsel in a declaration are not factual allegations and are therefore irrelevant.	<input type="checkbox"/> Overruled
13		<u>FRE 1002</u>	
14		The best evidence of the content of the assignments is the assignments themselves, and not May's interpretations of them or musings regarding them.	
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19	5. May Decl., ¶ 6, Pg. 3, Line 24 – Pg. 4, Line 2	<u>FRE 401/402</u>	<input type="checkbox"/> Sustained
20	"Based on the productions in response to the subpoenas, it still remains unclear what copyrightable material (if any) was actually created by most, if not all, of the authors."	Arguments by counsel in a declaration are not factual allegations and are therefore irrelevant.	<input type="checkbox"/> Overruled
21		<u>FRE 602</u>	
22		<u>FRE 701</u>	
23		<u>Lacks Foundation</u>	
24		May lacks the personal knowledge necessary to make this statement, as he has failed to lay any foundation to show that he has the expertise necessary to provide testimony as to what is or is not copyrightable. His opinion	
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1		therefore constitutes improper lay witness testimony that encompasses technical and/or specialized exclusively within the scope of Rule 702.	
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5		<u>FRE 1002</u>	
6		The best evidence of the content of the “productions” is the documents in the productions themselves, and not May’s interpretations of them or musings regarding them.	
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9	6. May Decl., ¶ 6, Pg. 4, Lines 9-15	<u>FRE 401/402</u>	<input type="checkbox"/> Sustained
10	“It is clear from all the evidence that Reiche’s and Ford’s claims of ownership of intellectual property rights to the Classic Star Control Games (<i>i.e. Star Control I, Star Control II and/or Star Control III</i>) is entirely tenuous and convoluted at best, and contrary to Reiche’s alleged rendition of the facts and interpretation of the contract terms at issue in his declaration.”	Arguments by counsel in a declaration are not factual allegations and are therefore irrelevant.	<input type="checkbox"/> Overruled
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12		<u>FRE 602</u>	
13		<u>FRE 701</u>	
14		<u>Lacks Foundation</u>	
15		May lacks the personal knowledge necessary to make this statement, as he has failed to lay any foundation to show that he has the expertise necessary to provide testimony as to Reiche and Ford’s ownership of intellectual property rights in Star Control I and II. His opinion therefore constitutes improper lay witness testimony that encompasses technical and/or specialized exclusively within the scope of Rule 702.	
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22		<u>Speculation</u>	
23		May is speculating as to Reiche and Ford’s ownership of intellectual property rights in Star Control I and II.	
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